Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Connect America Fund	)	WC Docket No. 10-90
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
High-Cost Universal Service Support	)	WC Docket No. 05-337
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Lifeline and Link-Up	)	WC Docket No. 03-109
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

COMMENTS OF METROPCS COMMUNICATIONS, INC.

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MetroPCS Communications, Inc. ("MetroPCS"),[1] by its attorneys, hereby respectfully submits these comments on certain intercarrier compensation issues raised in Sections XVII.L-R of the *Further Notice of Proposed Rulemaking* ("*FNPRM*").[2] Specifically, MetroPCS focuses its

[1] For purposes of this Petition, the term "MetroPCS" refers collectively to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

[2] *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92,

comments on portions of the *FNPRM* pertaining to the extension of the bill-and-keep regime to originating access rates[3] and transport and tandem switching charges, certain interstate issues related to bill-and-keep and the IP-to-IP interconnection rules. In response, the following is respectfully shown:

I. INTRODUCTION AND SUMMARY

MetroPCS has commended the Commission for the herculean accomplishment of completing the first step of a decade-long goal of reforming the intercarrier compensation system through the adoption of a unified intercarrier regime, and applauds the Commission's concurrent issuance of the *FNPRM* in an effort to address the remaining issues promptly. The *USF/ICC Transformation Order* made meaningful, positive, and major reforms, but the *FNPRM* properly recognizes that there is important work still to be done to fully implement the bill-and-keep and IP-to-IP interconnection schemes. As the Commission addresses the remaining implementation issues, MetroPCS urges it to guard against unintended opportunities for arbitrage and unintended consequences. The Commission has taken well-conceived actions to eliminate uneconomic arbitrage opportunities and must remain vigilant because experience shows that unprincipled carriers will exploit even the smallest of loopholes. Because the intercarrier compensation regime evolved over many years but was reformed substantially in November of last year, the Commission must monitor post-reform developments closely to guard against unintended consequences.

96-45, WT Docket No. 10-208, Report and Order (the "*Transformation Order*" and Further Notice of Proposed Rulemaking (the *"FNPRM"*), FCC 11-161 (rel. Nov. 18, 2011).

[3] MetroPCS' comments here on originating access are limited to non-800 originating access. For 800 originating access, originating access is necessary to ensure the calling party pays for all costs associated with the call.

In order to discourage further arbitrage, MetroPCS supports a prompt transition to bill-and-keep for all remaining inter- and intrastate rate elements, such as intraMTA originating access, and for transport and termination and transit rates. By adopting a near-term transition for these elements, the Commission will be taking yet another step to eliminate opportunities for arbitrage in the intercarrier compensation regime. Because carriers look to their own customers for payment under a bill-and-keep system for both the origination and termination of traffic, this mechanism eliminates any incentive for carriers to seek a "free ride" on other carrier networks or to stimulate traffic to high cost termination points. Thus, the bill-and-keep methodology removes the incentive for traffic arbitrages and traffic pumpers to "game the system" by deliberately seeking out arbitrage opportunities. A bill-and-keep regime discourages carriers from implementing excessive rates and then sharing revenues with customers who originate or terminate large volumes of one-way traffic thereby generating significant terminating revenue. A prompt transition to bill-and-keep is appropriate and necessary for the remaining rate elements because a slower, more gradual transition would preserve opportunities for arbitrage, perpetuate inefficiencies and prolong the deployment of Internet Protocol ("IP") networks and IP-to-IP interconnection. Finally, the FCC must recognize that transit is within the ambit of interconnection and the rates for transit services must be forward-looking and cost-based.

With respect to the bill-and-keep implementation issues that the *FNPRM* discusses, MetroPCS' comment focuses on the rules governing the impact on wireless carriers of points of interconnection, the definition of the network edge, and the proposed extension of the *T-Mobile Order*. As is set forth in greater detail below, MetroPCS continues to support a rule allowing a carrier to establish a single point of interconnection ("POI") in each LATA, and urges the Commission not to significantly modify the rule, or to adopt any new or changed requirements for the POI, as such actions may have unintended consequences and seriously impact wireless

providers. Also, in order to maintain a level playing field, the network edge must be defined based on the type of network involved. These implementation rules will ensure that each participant in an interconnected communication bears a reasonable portion of the network responsibilities and costs. Finally, MetroPCS strongly urges the Commission to reject those proposals suggesting that the right granted to incumbent local exchange carriers ("ILECs") under the *T-Mobile Order* to force a commercial mobile radio service ("CMRS") carrier into a state arbitration be extended to competitive local exchange carriers ("CLECs"). Such an extension would be inappropriate because both CMRS providers and CLECs have equal bargaining power when it comes to securing interconnection agreements, so voluntary arms length agreements should be required without arbitration. Further, as is discussed in greater detail below, the Commission's adoption of bill-and-keep for all CMRS-LEC traffic, renders the existing rule unnecessary even for ILECs.

MetroPCS also addresses several issues pertaining to the Commission's regulation of IP-to-IP interconnection. Because the telecommunications environment is rapidly developing into an all-IP world, MetroPCS supports the Commission's efforts to promote, rather than hinder, this evolution. To this end, the Commission must take action to remove barriers and facilitate the transition to an all IP-to-IP interconnection regime. Specifically, the Commission should find that it has the authority to regulate IP-to-IP interconnection and should use its broad statutory authority to regulate IP-to-IP interconnection, clarifying that carriers that are obligated to provide reasonable interconnection, must continue to do so for IP traffic, to the extent it is technically feasible.

II. A PROMPT TRANSITION TO BILL-AND-KEEP SHOULD BE IMPLEMENTED FOR REMAINING RATE ELEMENTS

MetroPCS has consistently supported a bill-and-keep intercarrier compensation regime, and applauds the Commission for adopting this basic methodology in its reforms.[4] A bill-and-keep regime eliminates many of the arbitrage opportunities that have plagued the existing calling party pays regime and the access regime. The calling party's network page and access regimes were adopted long before there were competitive choices and have long outlived their usefulness. However, certain rate elements – such as originating access and transport and termination– have yet to be assigned a transition schedule. The *FNPRM* properly recognizes that an appropriate methodology and recovery mechanism must be established for an orderly and proper transition of those important elements. MetroPCS submits that the appropriate approach is to properly adopt interim measures designed to eliminate the larger inequities in the current system and to provide a short, reasonable glide path (no longer than four years) to the ultimate bill-and-keep regime. As the Commission recognizes, bill-and-keep "has numerous consumer benefits, best addresses access charge arbitrage, and will promote the transition from TDM to all-IP networks."[5] Therefore it is important to adopt a prompt transition to bill-and-keep for originating access and the remaining termination rate elements. Furthermore, leaving these remaining rate elements out of the equation fails to implement a truly comprehensive and unified reform. Bringing all of the remaining rate elements in line with each other will allow for a truly unified intercarrier compensation system. Indeed, the Commission has noted that "[t]he wildly varying and disparate rates within the intercarrier compensation system create arbitrage opportunities and introduce layers of regulatory complexity and associated costs, which hinder

[4] MetroPCS has articulated previously that a bill-and-keep methodology removes opportunities for various forms of traffic arbitrage and fraud, as well as eliminates antiquated regulatory distinctions between technologies and services. *See* Comments of MetroPCS Communications, in CC Docket No. 01-92 *et al.*, 7 (filed Aug. 19, 2011) ("*MetroPCS Further Inquiry Comments*").

[5] *FNPRM* at ¶ 1297.

the deployment of IP networks."[6] Leaving these disparities in place could compromise the reform by generating continued controversy and litigation, and provide fertile ground for arbitrage.

a. IntraMTA Originating Access Rates for calls to CMRS Customers Should Be Promptly Transitioned to Bill-and-Keep To Eliminate Significant Arbitrage Opportunities

IntraMTA originating access charges present substantial arbitrage opportunities at this time and must be included with the rest of the rate elements in a transition to a bill-and-keep methodology. There is a serious looming risk that traffic pumping carriers who are losing terminating access revenue will pursue business models designed to capture a larger share of originating access. As MetroPCS has previously noted, unprincipled carriers "have not hesitated to exploit omissions, or loopholes, in the Commission's rules."[7] For example, traffic pumping carriers can be expected to take advantage of this originating access loophole by abandoning their terminating business models for ones that seek to capture originating traffic, such as call centers. The potential for abuse is particularly acute when the person who is paying for the call is the interexchange carrier. LECs can share originating access with those customers who are able to negotiate rates with interexchange carriers who are then unable to avoid the originating access charges. Therefore the Commission must take steps to eliminate this arbitrage opportunity, by implementing a short transition to bill-and-keep for intraMTA originating access charges for calls to CMRS customers.

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[6] *Connect American Fund, et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, ¶ 496 (2011).

[7] Petition of MetroPCS Communications, Inc. For Clarification and Limited Reconsideration, in CC Docket No. 01-92, *et al.*, 18 (filed Dec. 29, 2011).

lntraMTA originating access also creates incentives for rural carriers to refuse to interconnect directly with CMRS carriers to exchange intraMTA traffic because the rural carrier can enjoy originating access if they require the call to be placed using an interexchange carrier's facilities. With the Commission moving to bill-and-keep for terminating access and for reciprocal compensation, rural carriers will be incented to keep requiring customers to use interexchange services to reach CMRS telephone numbers which are located in the same MTA. This is a form of traffic pumping as the rural carriers route traffic in a less efficient manner to maximize their compensation payments. The result is an unfair shifting of costs to the CMRS carrier who is forced to incur all of the cost to get its traffic to the rural carrier because the rural carrier is not incented to either engage in bi-lateral interconnection negotiations or pay for one-half of any interconnection facility. This problem is further exacerbated by the Commission's decision, at least on an interim basis, to require CMRS carriers to pay for facilities in each direction to interconnect with rural carriers outside the rural carrier's service area. The Commission needs to eliminate this disincentive for mutual interconnection facilities.

b. Transport and Tandem Switching Charges Also Should Be Promptly Transitioned to Bill-and-Keep

The same holds true for transport and tandem switching charges. Arbitrage opportunities remain prevalent due to the lack of regulation around these rate elements and they, too, must promptly be transitioned to bill-and-keep. Although the *Order* establishes a transition for certain types of transport and termination, it "does not address the transition for tandem switching and transport charges if the price cap carrier does not own the tandem in the serving area."[8]

[8] *FNPRM* at ¶ 1306.

MetroPCS submits that Section 251(b)(5) applies to both transport and termination of traffic, and therefore these rate elements should be included in, and not excluded from, this reform.

MetroPCS submits that the proper transition period to bill-and-keep for the transport and tandem switching elements would be no longer than 4 years, which should conform with the transition period for originating access. During this relatively short transition, MetroPCS urges the Commission to clarify that incumbent LECs will be required to provide transport services at reasonable cost-based rates.[9] Without such regulation, MetroPCS and other competitive providers will be forced to pay unreasonably high charges for these services which, in turn, will drive up costs for consumers.

c. Transit Is A Crucial Aspect to Interconnection And Must Be Addressed Under the Intercarrier Compensation Regime

The Commission seeks comment on the need for regulatory involvement with, and the appropriate end state for, transit service.[10] MetroPCS has consistently supported transit traffic regulation under the intercarrier compensation regime and this issue must be promptly addressed by the Commission.[11] The ability of the originating carrier to secure transiting services from connecting carriers is a critical element to ensuring interconnection. Furthermore, these

[9] Indeed, the ILECs have already tried to raise the rates for transit traffic arguing that since the Commission has not directly found that transit was a form of interconnection, such services were to be provided at "market" rates which are multiples of existing rates. These same ILECs have refused to include transit in interconnection agreements in an effort to avoid their obligations under Section 251(c). The Commission must make a clear determination that transit traffic is a form of interconnection and governed by Section 251(c).

[10] *FNPRM* at ¶ 1313.

[11] *See e.g.*, Comments of MetroPCS Communications, Inc., in CC Docket No. 01-92 *et al*., 28 (filed Apr. 19, 2011) ("*MetroPCS NPRM Comments"); MetroPCS Further Inquiry Comments* at 20-22; Reply Comments of MetroPCS Communications, Inc. in response to Further Inquiry, in CC Docket No. 01-92, *et al.*, 7-9 (filed Sept. 6, 2011) (*"MetroPCS Reply Comments").*

transiting services must be provided at a reasonable cost. It would be a hollow right for an originating carrier to be entitled to secure transiting services from a connecting carrier if there are no limits placed on the reasonableness of the charges to be imposed. Therefore, the Commission should reaffirm that transit is a form of interconnection under Section 251 and the rules for such service must be either bill-and-keep, or the total element long run incremental cost (TELRIC) to provide transit.

Specifically, transit traffic should be governed by Section 251(c) of the Act to ensure that transit costs remain reasonable. MetroPCS proposes that the Commission adopt a rate for such traffic that is based upon the long-term incremental cost for the provision of such traffic. Because considerable amounts of traffic still are transported through indirect interconnection, without this proposed regulatory action, the costs for transit traffic could increase exponentially. Regulation under Section 251(c)(2) would ensure that transit be made available as a form of interconnection at cost-based rates, which, in turn will safeguard providers from certain LECs that might otherwise be tempted to exploit their large market power. A recent Connecticut court case concluded that transit traffic is a form of interconnection and subject to Section 251(c)(2) of the Act, finding that "interconnection under section 251(c) includes the duties to provide indirect interconnection and to provide transit service."[12] This holding provides support for MetroPCS' view that transit should be dealt with under the Telecommunications Act of 1996 and be part of the Commission's comprehensive intercarrier compensation reform.

LECs and ILECs should be given a choice for the rates to be charged for transit. To the extent that a LEC does not have sufficient transit traffic to justify undertaking a cost study to

[12] *The Southern New England Telephone Company d/b/a Connecticut v. Perlermino et al.*, 3L09-CV-1787 (WWE) Memorandum of Decision, 8 (D. Conn. May 2011); *See also MetroPCS Further Inquiry Comments*, at 21-22.

determine the TELRIC cost, it should be obligated to provide transit at bill-and-keep. For those LECs and ILECs which have sufficient transit traffic, they should be required to demonstrate their costs in a state regulatory proceeding. Since, for the most part, only ILECs are providing transit services and they already have established TELRIC rates for the various elements for transit service, this should not impose any additional burden on the transit provider. The transit rates should consist only of the per minute switching costs at the tandem and any per minute transport rates. Any other costs should be ignored and not recovered.

III. THE BILL AND KEEP IMPLEMENTATION SHOULD PROMOTE A LEVEL PLAYING FIELD

a. The Single POI Per LATA Rule Should Not Be Modified

The Commission seeks comment on whether it needs to "provide new or revised POI rules at some later stage of the transition to bill-and-keep or provide one set of rules to be effective" at the respective ends of the transitions for price cap carriers and rate-of-return carriers.[13] MetroPCS has long supported the Commission's interpretation of Section 251(c)(2)(B) to mean that interconnecting carriers have the option to interconnect at a single POI per LATA, and does not believe that the Commission needs to adopt new or revised POI rules. Because CMRS systems are licensed on a broad geographic area basis (often an MTA basis), CMRS service areas routinely cover multiple LEC LATAs and LEC local calling areas. Absent the existing requirement permitting a single POI per LATA, CMRS carriers would have been subject to costly and burdensome interconnection requirements had they been required to interconnect in every local calling area or pay for transport to every POI located outside a local calling area. Consequently, the Commission must be particularly mindful of the potentially negative impact of changes it might adopt to the network interconnection requirements. Indeed,

[13] *FNPRM* at ¶ 1316.

a shift away from a single POI per LATA would have a significant negative effect on the wireless industry which has designed its network around this important network design rule.

b. The Network Edge Should Be Defined Differently for Different Networks

Furthermore, another important network design aspect is the "edge" of the network, or the point where bill-and-keep begins to apply. The Commission categorizes the definition of the network "edge" for purposes of delivering traffic as "a critical aspect to bill-and-keep,"[14] as this determines the point at which a carrier's responsibility for carrying the traffic ends. MetroPCS agrees that this is an important aspect to the intercarrier compensation regime, and believes it makes sense to establish different interconnection rules for CMRS networks and other networks. CMRS networks often are different than other more localized networks since, in many cases, they overlay numerous networks. It would not be uncommon for a CMRS network to overlay both urban and rural ILEC service areas as well as numerous CLEC service areas. In this instance, the network edge must be defined in a manner that keeps each firm from gaming the system and unfairly requiring the other carrier to pay for charges. For example, when a CMRS carrier seeks to interconnect with a rural carrier in an adjacent area, each should be required to transport the traffic from and to the edge of their network and the POI should be at the border where the networks touch. However, when they overlay each other, the more appropriate POI may be at a point equidistant from each party's switch so as to balance the costs between each carrier. While the network edge might vary depending on the direction of the traffic, the Commission needs to be mindful that such an approach might lead some carriers to engage in arbitrage when creating network edges in an effort to force CMRS carriers to bear the brunt of the transport charges. For example, if the network edge is at the LEC switch, the LEC may be

[14] *Id.* at ¶ 1320.

incented to generate one-way traffic from the CMRS carrier since they will not bear any of the cost of transport of the traffic. Such distinctions would not undermine the goal of establishing a unified regime, but rather, they would recognize that different network architectures require different implementation plans in order for there to be a level playing field in which each participant bears a reasonable portion of the network responsibilities or costs during the evolution to bill-and-keep.

c. The *T-Mobile Order* Should Not Be Extended To Include CLECs

Finally, with respect to interconnection implementation issues, MetroPCS strongly urges the Commission not to extend to all telecommunications carriers, including CLECs the interconnection agreement process applied to ILECs in the *T-Mobile Order*.[15] The proposed extension would require commercial mobile radio service providers ("CMRS") providers to negotiate agreements with CLECs under the Sections 251 and 252 frameworks and, perhaps, give rise to CMRS/CLEC arbitration at the state level.[16] Such an extension is a bad idea for many reasons. First, the Commission does not have the statutory authority to further extend the process set forth in the *T-Mobile Order* to CLECs and CMRS carriers. The duty to negotiate in Section 251(c)(1) and the interconnection duty set forth in Section 251(c)(2) are expressly designated as "*Additional Obligations of Incumbent Local Exchange Carriers.*"[17] These additional obligations were imposed because the Telecommunications Act of 1996, (the "96

[15] *See Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855 (2005) ("*T-Mobile Order*").

[16] *See FNPRM* at ¶ 1324.

[17] 47 U.S.C. § 251(c).

Act") recognized the market power of ILECs.[18] Indeed, as explicitly acknowledged in the *FNPRM*:

> Incumbent LECs have no economic incentive… to provide potential competitors with opportunities to interconnect with and make use of the incumbent LEC's network and services… consequently, '[n]egotiations between incumbent LECs and new entrants are not analogous to traditional commercial negotiations in which each party owns or controls something the other party desires.'[19]

Imposing these additional obligations on non-ILECs, such as CMRS carriers and CLECs, would clearly violate the carefully crafted distinctions embodied in the 96 Act. In addition, the authority of the Commission to compel states to conduct arbitration proceedings beyond those specifically identified in the 96 Act is highly questionable. Unfunded regulatory mandates of this nature are not favored.

Second, the rationale offered by the Commission in the *T-Mobile Order* for allowing ILECs to request interconnection and invoke the state arbitration remedy against CMRS carriers does not apply to CLECs. The Commission found there to be unequal bargaining power between CMRS carriers and ILECs because the former could request interconnection and demand arbitration under the 251(c)/252 regime, but the ILEC could not. There is no similar negotiating disparity between CMRS carriers and CLECs. Since neither is subject to the state arbitration process vis-à-vis one another, there is no unequal bargaining power. Since the parties are on a level playing field, they should be left alone and encouraged to enter into a voluntary negotiated interconnection agreement.

Third, there is not a sufficient record for the Commission to determine that regulatory intervention is required. Innumerable voluntary interconnection agreements have been reached between CMRS carriers and CLECs under the current rules and regulations. To the extent that

[18] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the "*96 Act*").

[19] *FNPRM* at ¶ 1337 (*citations omitted*).

interconnection disputes between CLECs and CMRS carriers emerged, they generally derived from controversial traffic pumping schemes which, hopefully, have been brought to an end under the new regime. Thus, regulatory intervention is not necessary or appropriate, particularly in light of the recent Executive Order,[20] which has been endorsed by the FCC,[21] calling on federal regulatory agencies to avoid unnecessary regulations.

Furthermore, and perhaps most important, the current rule that arose out of the *T-Mobile Order* – Section 20.11(e) – now is unnecessary, even for ILECs, and should be jettisoned. The rule was adopted in the context of a calling party pays system and the Commission was responding to claims of ILECs that CMRS carriers were refusing to request and enter into reasonable interconnection agreements with ILECs as a means of not paying reciprocal compensation. Now that the Commission has adopted bill-and-keep as the compensation mechanism for LEC-CMRS interconnection, the disputes that previously arose should not occur. Since CMRS carriers are not required to pay for terminating traffic on LEC networks, CMRS carriers have no incentive not to engage in interconnection negotiations with LECs. Indeed, it is the ILECs who may have incentives to refuse to engage in negotiations for direct interconnection facilities in order to perpetuate originating access. The Commission should not therefore extend Section 20.11(e) to CLECs since the rule has outlived its usefulness. Further, MetroPCS

[20] President Barack Obama issued an Executive Order on July 11, 2011 which called on federal agencies, *inter alia*, to use the "least burdensome tools for achieving regulatory ends," by conducting both quantitative and qualitative cost-benefit analyses. Exec. Order No. 13579, 76 FR 41587 (Jul. 14, 2011), *available at* http://www.gpo.gov/fdsys/pkg/FR-2011-07-14/pdf/2011-17953.pdf.

[21] *See* News Release, Statement from FCC Chairman Julius Genachowski on the Executive order on Regulatory Reform and Independent Agencies (Jul. 11, 2011), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308340A1.pdf.

respectfully submits that the Commission also should eliminate the ability of ILECs to invoke the state arbitration procedures of Section 252 of the Act since this power is no longer needed.

IV. COMMISSION REGULATION WILL FURTHER ENCOURAGE IP-TO-IP INTERCONNECTION

Telecommunications carriers have increased the use of IP networks to route traffic, enabling them to capture the efficiency benefits, as well as the redundancy and resiliency associated with such networks, and to offer new and innovative services that were not possible with legacy networks. In adopting the initial steps to eliminate barriers to IP-to-IP interconnection, the Commission recognizes the important contributions that this innovative technology will bring to the communications industry as a whole. MetroPCS supports the Commission's further efforts to "affirmatively encourage the transition to IP-to-IP interconnection where it increases overall efficiency for providers to interconnect in this manner,"[22] and recommends that the Commission take action to regulate such traffic and further serve the public interest.

a. The Commission Has The Statutory Authority To Regulate IP-to-IP Interconnection

As an initial matter, IP-to-IP interconnection is telecommunications and IP-to-IP interconnection is a telecommunication service under the Act. Telecommunications is defined under the Act as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." IP-to-IP interconnection is telecommunications because the information is conveyed from the originating carrier to the terminating carrier without any change in form,

[22] *FNPRM* at ¶ 1360.

content, or format. In addition, any conversion that occurs is not a net protocol conversion since the traffic is IP on both sides of the interconnection interface. Further, IP-to-IP interconnection is also a telecommunications service. The Act defines telecommunication service as "the offering of telecommunications for a fee directly to the public, regardless of the facilities used." Here, since IP-to-IP interconnection is being used to provide interconnectivity with the public switched telephone network for hire, it is clearly a telecommunication service.

MetroPCS believes the Commission has the statutory authority to regulate IP-to-IP interconnection under multiple provisions that are cited in the *FNPRM*. The *FNPRM* provides a robust discussion of the statutory provisions that could sustain Commission regulation of IP-to-IP interconnection. Because it is imperative for the Commission to extend the comprehensive scheme to IP-to-IP interconnection, MetroPCS recommends that the Commission invoke any and all available provisions to justify its action.

Notably, the Commission previously has taken a broad approach of this nature to establish its authority to regulate data roaming.[23] The obvious benefit of this approach is that the Commission's Order can be sustained on appeal if any of the cited jurisdictional bases are upheld. Here, the Commission has cited its ancillary authority under Title I, as well as Sections 201, 251(a)(1), 251(c)(2), 256 and 332 of the Communications Act, and Section 706 of the 96 Act, as possible bases of authority. MetroPCS does not recommend that the Commission rely on its general ancillary jurisdiction under Title I since courts have looked askance at Commission

[23] *See e.g., In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, WT Docket No. 05-265, FCC 11-52, ¶ 2 (rel. Apr. 7, 2011) ("*Data Roaming Order")*.

efforts to convert Title I into a broad mandate to take any action that is considered by the Commission to be in the public interest.[24]

MetroPCS also does not support jurisdiction under Section 706 of the 96 Act since the Commission previously held that "[Section]706 does not constitute an independent grant of authority"[25] and the recent effort of the Commission to revisit this holding is subject to serious challenge.[26] Resting IP-to-IP interconnection in this section would therefore put the authority to engage in regulation IP-to-IP interconnection into jeopardy.

However, the remaining bases of jurisdiction cited by the Commission – particularly Sections 201, 251(a)(1), 251(c), 256 and 332 – provide the Commission with the requisite authority to regulate IP-to-IP interconnection. Specifically, Sections 251(c) and 256 empower the Commission to regulate IP-to-IP interconnection involving ILECs. Section 332 gives the Commission broad authority over wireless carriers. And Section 201 and 251(a)(1) apply broadly to all carriers. Notably, the Commission would be justified in using these broad sections as a basis to regulate all carriers and then, to incorporate the detailed substantive requirements of Section 251(c) – particularly the duty to negotiate in 251(c)(1) and the interconnection standards in 251(c)(2) – based upon a finding that the public interest is served by consistency between the ILEC and non-ILEC standards with respect to IP-to-IP interconnection.

b. IP-to-IP Interconnection Policy Framework

The Commission should exercise its regulatory authority by requiring that, if a carrier is obligated to provide interconnection, it must also provide interconnection for IP traffic upon

[24] *See e.g., Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010).

[25] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 13 FCC Rcd 24012, ¶ 77 (1998).

[26] *See Cellco Partnership v. FCC*, Case No. 11-1135 (D.C. Cir).

reasonable request, to the extent that such action is technically feasible. MetroPCS does not agree with those proposals seeking to adopt a policy framework that leaves IP-to-IP interconnection to unregulated commercial agreements especially as it relates to traffic that traditionally has been carried by the PSTN. As stated above, the communications landscape is increasingly evolving into an all-IP world, and as a result, IP traffic interconnection is becoming increasingly important. Leaving such an important – and necessary – aspect of the telecommunications industry to commercial agreements would not be in the public interest. Frequently, carriers such as MetroPCS must seek to interconnect from other carriers who also are direct wireless competitors. Surely competitors would seek to take advantage of this framework and deny IP-to-IP interconnection on reasonable rates, terms, and conditions to raise general market costs.[27] This would not be the first instance where carriers attempt to take advantage of the system in order to give themselves a competitive edge. In order for the Commission to reach its stated goal to "promote IP-to-IP interconnection and facilitate the transition to all-IP networks," it must play a regulatory role to ensure that all current and possible barriers to IP-to-IP interconnection are removed.

c. VoIP Traffic Should Only Be Brought Into The Intercarrier Compensation Regime Once the Transition to Bill-and-Keep Has Been Completed

MetroPCS previously argued against applying VoIP to the intercarrier compensation regime at this time. Specifically, MetroPCS advocated that VoIP only come under the intercarrier compensation regime after the transition period ends and all traffic is settled into bill-and-keep. MetroPCS' position has not changed. Due to the unique architecture of IP-based

[27] The Commission has seen first hand the ill effects of such situations in connection with voice and data roaming where the largest incumbent carriers consistently have refused to enter into reasonable commercial agreements for competitive reasons.

telecommunications, applying a compensation regime based on per-minute charges simply is incompatible as it could require IP traffic to be converted to switched voice traffic *solely* to determine compensation and then be reconverted back to IP. Therefore, only when the bill-and-keep transition has completed and all rates are settled, should VoIP be included in the comprehensive framework.

V. CONCLUSION

MetroPCS applauds the Commission's decision to implement bill-and-keep as the end point pricing methodology and urges the Commission to provide a prompt transition for certain rate elements (intraMTA originating access to CMRS, and transport and termination) to ensure that the benefits of this methodology are realized. Bill-and-keep is recognized as a framework that will remove the incentive for various forms of arbitrage and fraud, and the sooner the rates are settled in accordance with this methodology, the sooner the arbitrage opportunities will be eliminated. Further, the Commission should agree with more state PUCs who have found that transit is a form of interconnection and must be provided on a TELRIC and bill-and-keep basis. MetroPCS also submits that certain elements of the bill-and-keep implementation should be adopted to ensure that a level playing field exists for all interconnection participants. Specifically, MetroPCS urges the Commission to maintain the current POI per LATA rule, define the network edge with respect to the type of network on which it is to apply, and to decline to extend the *T-Mobile Order* to CLECs and reconsider whether the rate should apply to ILECs.

MetroPCS also supports the view that IP-to-IP interconnection needs to be regulated, rather than leaving such interconnection to unregulated agreements. MetroPCS submits that the Commission has ample authority to exercise jurisdiction over IP-to-IP interconnection.

Respectfully submitted,

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